

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Staff’s Review of the) File No. TW-2017-0078
Commission’s Chapter 31 Rules)

In the Matter of Staff’s Review of the) File No. TW-2018-0098
Commission’s Chapter 28 Rules)

**COMMENTS OF THE
MISSOURI CABLE TELECOMMUNICATIONS ASSOCIATION**

COMES NOW the Missouri Cable Telecommunications Association (“MCTA”), and for its Comments in the above-referenced Dockets, respectfully states as follows:

Background

On October 17, 2017, the Staff of the Missouri Public Service Commission (“Staff”) filed its Request for Comments in File No. TW-2017-0078, and “Staff Motion to Open New Docket and Request for Comments” in File No. TW-2018-0098. Attached to those filings were Staff’s proposed changes to the above-referenced rules.

In the filings, Staff noted that the proposed changes rescind, replace, streamline and establish new provisions in these important rules impacting the telecommunications industry. Staff “asks all interested parties to review its proposed changes and submit any comments and suggestions no later than October 23, 2017.” Staff further notes that pursuant to the Governor’s Executive Order 17-03, state agencies have been asked to review their currently effective rules and propose changes to make the rules more efficient and effective.

On October 20, 2017, Staff held a conference call to provide an overview of the proposed rules for interested stakeholders. During that conference call, Executive Order

17-03 was referenced and discussed. Staff indicated that in compliance with Executive Order 17-03, the purpose of the proposed rules was to streamline and simplify the rules, clean up inconsistent language, minimize overly burdensome provisions, and otherwise make them more efficient and effective.

Comments

MCTA would like to point out that despite Staff's stated purpose in proposing these rules, Staff's proposal contains two substantive and significant additions to the Chapter 31 rules that fall outside of the executive order's mandate to streamline and simplify the rules:

- Expands the definition of "Essential local telecommunications service" to include retail broadband service; and
- Establishes a new program called "Missouri USF High Cost Support." This new program would expand the Missouri USF purpose—from helping low-income and disabled Missourians to receive discounts for voice telephony service—to providing funding to build out retail broadband service to underserved areas.

Since these two substantive changes are beyond the purpose and objectives of Executive Order 17-03, they should be removed from this rulemaking. The issues raised by expanding the Missouri USF to support retail broadband service and funding the build out of retail broadband service to underserved areas are complicated and controversial, and should not be included in an effort to streamline and simplify the rules.

On the issue of whether the Commission has the legal authority to expand the Missouri USF to include broadband, MCTA has previously filed comments asserting that there is no such

authority. On June 14, 2017,¹ October 20, 2016,² and April 28, 2017,³ MCTA filed comments in File No. TW-2017-0078 providing that the Missouri USF cannot be expanded to support broadband service for several reasons. MCTA will not repeat those comments here, but they are hereby incorporated herein in their entirety by this reference thereto. Because the Commission does not have the statutory authority to expand the Missouri USF to support broadband service, it is premature for the Commission to propose new rules doing exactly that before it has addressed the legal issue which has been raised in this proceeding by a number of commenters. As detailed more fully in its prior comments, MCTA maintains its position that the Commission has no jurisdiction to expand the Missouri USF support to a broadband-only service.

- There is no legal authority for the Commission to use the Missouri USF to support any broadband service—whether “broadband-only” or as part of the services supported by the Missouri USF. This is because Missouri law prohibits the Commission from regulating broadband.
- Both federal and Missouri law prohibit this Commission from regulating interstate services, which include broadband service. The FCC has classified broadband as a jurisdictionally interstate service for regulatory purposes.⁴ Therefore, similar to such interstate circuit-switched services, broadband service is not subject to state jurisdiction.⁵
- Policy concerns suggest that the Commission should delay any state-planned action to support broadband service. Pending federal litigation and newly opened FCC

¹ See, Comments of the Missouri Cable Telecommunications Association, EFIS No. 58, June 14, 2017.

² See, Comments of the Missouri Cable Telecommunications Association, EFIS No. 37, October 20, 2016.

³ See, Comments of the Missouri Cable Telecommunications Association, EFIS No. 47, April 28, 2017.

⁴ See *In the Matter of Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, 30 FCC Rcd. 5601 at ¶ 431 (Mar. 12, 2015).

⁵ See Section 386.030 (the Commission has no jurisdiction under Chapter 386 with respect to interstate commerce, except as permitted by federal law.); Section 392.190 states, “the provisions of section 392.190 to 392.530 shall apply to telecommunications service *between one point and another within the state of Missouri* and to every telecommunications company.” (Emphasis added.)

proceedings⁶ relevant to this question warrant the Commission waiting before acting in a manner that could be inconsistent with the courts and the FCC.

Accordingly, MCTA believes that the issue of whether the Missouri USF should be expanded to include broadband service is a matter for the General Assembly to decide, not the Commission.

WHEREFORE, MCTA respectfully submits these comments for the Commission's consideration, and hopes that they will be useful in studying these issues regarding the Missouri USF.

Dated October 23, 2017

Respectfully submitted,

MISSOURI CABLE TELECOMMUNICATIONS
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⁶ See, e.g., *In the Matter of Restoring Internet Freedom*, Notice of Proposed Rulemaking, WC Docket No. 17-108, FCC 17-60 (rel. May 23, 2017).